

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

**FRYMIRE HOME SERVICES, INC. AND
WHITFIELD CAPITAL, LLC**

PLAINTIFFS

VS.

**LIBERTY MUTUAL INSURANCE CO. AND
OHIO SECURITY INSURANCE CO.**

DEFENDANTS.

CIVIL ACTION NO. 3:19-CV-01938-B

**UNOPPOSED MOTION FOR LEAVE TO FILE PLAINTIFFS' FIRST AMENDED
COMPLAINT AND UNOPPOSED MOTION TO DISMISS LIBERTY MUTUAL**

COME NOW Frymire Home Services, Inc. (referred to as "Plaintiff Frymire") and Whitfield Capital, LLC (referred to as "Plaintiff Whitfield") (collectively referred to as "Plaintiffs") and hereby request leave to file Plaintiffs' First Amended Complaint complaining of Ohio Security Insurance Company (referred to as "Defendant Ohio Security") and unopposed motion to dismiss Liberty Mutual Insurance Co. and would respectfully show the Court as follows:

**I.
Introduction**

2. Plaintiffs are named insureds under a commercial property insurance policy purchased through Defendant Liberty Mutual Insurance Company and issued by a Liberty Mutual company, Defendant Ohio Security. Plaintiffs' made a claim for damage to the property caused by a hail and wind storm. Defendant Ohio Security has denied the claim. Plaintiffs have alleged causes of action for 1) breach of the insurance contract; 2) common law misrepresentations; 3) violations of the Texas Insurance Code; 4) violations of the Texas Deceptive Trade Practices-Consumer Protection

Act (“DTPA”); and, 5) breach of the duty of good faith and fair dealing.

3. Plaintiffs brought suit against Liberty Mutual Insurance Co. and Ohio Security Insurance Company.

4. The case was originally filed in Texas State District Court in Dallas County, Texas. The lawsuit was removed to this Court by the Defendants. The original complaint is the petition filed in state court.

II.

5. Plaintiffs seek leave to amend its complaint to drop Defendant Liberty Mutual Insurance Company from the pleadings and upon the filing of Plaintiffs’ First Amended Complaint to dismiss Defendant Liberty Mutual.

6. Plaintiffs have reached an agreement with Defendants that the actions of Liberty Mutual in handling the claim made by Plaintiffs will be attributed to Defendant Ohio Security and, therefore, the inclusion of Liberty Mutual as a separate defendant is not necessary.

7. Plaintiffs are filing the amended Complaint along with this motion for leave attached hereto as Exhibit A.

III. Conclusion

8. For the above reasons, Plaintiffs seek leave to amend their complaint and dismiss Defendant Liberty Mutual Insurance Co. from the lawsuit.

Respectfully submitted,

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/s/ Jay K. Gray

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ATTORNEYS FOR PLAINTIFFS

CERTIFICATE OF CONFERENCE

On January 3, 2020, I conferred with Counsel for the Defendants concerning the merits of this motion and they do not oppose the motion.

/s/ Jay K. Gray

CERTIFICATE OF SERVICE

This will certify that a true and correct copy of the foregoing *Unopposed Motion for Leave to File Plaintiffs' First Amended Complaint and Unopposed Motion to Dismiss Liberty Mutual* was served via e-mail on this 3rd day of January 2020 upon counsel of record.

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/s/ Jay K. Gray